



APEX FENCE COMPANY, INC

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California LIC # 269127
Nevada LIC # 22365
Bond Rate 1 %
SBE # 1002799

May 27th, 2015

Department of Transportation
Division of Engineering Services
Office Engineer
P.O. Box 168041, MS-43
Sacramento, CA 95816

Mr. McMillan

Please find this letter as in response to Corral Construction Company (Corral) bid protest dated May 6th 2015. In response to Corral protests of Apex's Bid for contract 10-0X5404. Corral has not identified any grounds on which the California Department of Transportation ("Caltrans") is required to reject Apex's bid. Because Corral identifies no material deviations and because Apex submitted the lowest bid by a responsible bidder, Apex request that Caltrans deny the protest and proceed with award to Apex Fence Co., Inc.

A bid is responsive if it promises to do what the solicitation requires. See *valet Crest landscape, Inc v. City of Davis*, 41 Cal. App 4th 1432, 1438 (1996). If a bid contains an immaterial deviation from what the solicitation requires, i.e. a deviation that could not have affect the amount of the bid or given the bidder an advantage or benefit not allowed other bidder, then Caltrans has the discretion to waive the deviation. See *MCM construction, Inc v. City and county of San Francisco*, 66 Cal. APP 4th 359, 374 (1998) (finding that a public entity has discretion to waive an immaterial deviation).

Corral argues that Apex's did not list the correct work category code for the temporary railing. The way I look at temporary railing (Type K) I see it as a traffic control device and not as a permanent concrete barrier. It is use to direct the traveling public away from the working zone thus directing traffic. This was Apex's first bid were we had to fill out the work category codes for the DBE form. Using codes and DBE search engine on Caltrans site and KRC DBE approved listing; we came up with Code C1201 as the best code representing the work that is to be performed for this item.

Apex's miss numbering of the work category code leaves Caltrans in no materially different position than the other bidders' identification of erroneous work category codes. The work category codes provide Caltrans with no accurate information beyond the information provided by more specific description of the work to be performed by each DBE. Thus, the mistake in the codes given by Apex did not give Apex any advantage over any other bidder. In either case, the



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critical information of identifying the work that the listed DBE will perform on the project is contained in the bid, so the deficiency should be waived as an immaterial deviation.

Thank you,

A handwritten signature in black ink, appearing to read 'David Parmer', is written over the printed name.

David Parmer
Office 530-365-3316x2
Cell 530-515-3379



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Fax

To: California DOT

From: David Parmer

Attn: John C. McMillan

Fax: 916-227-6282

Pages: 3 Including transmittal

Phone:

Date: 5-27-15

Re: 10-0X5404 Bid Protest Response

Email: apexmatt@shasta.com.

☐ **Urgent** ☐ **For Review** ☐ **Please Comment** ☐ **Please Reply** ☐ **Please Recycle**

☐ **Comments:**

John-

Please find the attached bid protest response.

Thanks,

Matt Marriott